

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
CONNECTICUT, NEW JERSEY,
RHODE ISLAND and WASHINGTON,
and COMMONWEALTHS OF
MASSACHUSETTS and VIRGINIA,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
JUSTICE; and WILLIAM P. BARR, in
his official capacity as Attorney General
of the United States,

Defendants.

No. 18-cv-6471 (ER)

CITY OF NEW YORK,

Plaintiff,

v.

WILLIAM P. BARR, in his official
capacity as Attorney General of the
United States of America, and the
UNITED STATES DEPARTMENT OF
JUSTICE,

Defendants.

No. 18-cv-6474 (ER)

**[PROPOSED] ORDER GRANTING PARTIAL SUMMARY JUDGMENT IN
PLAINTIFFS' FAVOR**

After considering the motion for partial summary judgment of Plaintiffs, the States of New York, Connecticut, New Jersey, Rhode Island, and Washington, and the Commonwealths of

Massachusetts and Virginia, as well as the City of New York, against Defendants, the United States Department of Justice and William P. Barr, in his official capacity as Attorney General of the United States, as well as the pleadings, declarations, and exhibits, the Court FINDS as follows:

1. Defendants' imposition of all immigration-related conditions on FY 2018 Byrne JAG applicants is unlawful.
 - a. Defendants lack the statutory authority to impose both the Original and Additional Conditions and, thus, the conditions are *ultra vires* under the Administrative Procedure Act and must be set aside.
 - b. Defendants have not acted in accordance with 34 U.S.C. § 10228(a), which prohibits Defendants from exercising any direction, supervision, or control over any state or local law enforcement agency.
 - c. Defendants' imposition of both the Original and Additional Conditions is arbitrary and capricious and must be invalidated.
2. Defendants' imposition of all immigration-related conditions on FY 2018 Byrne JAG applicants is unconstitutional.
 - a. Defendants cannot impose the Section 1373/1644 conditions because 8 U.S.C. § 1373 is unconstitutional under Tenth Amendment anti-commandeering principles.
 - b. Defendants cannot impose the Section 1373/1644 conditions because 8 U.S.C. § 1644 is unconstitutional under Tenth Amendment anti-commandeering principles.
 - c. Defendants' imposition of both the Original and Additional conditions violates the separation of powers.

Accordingly, IT IS HEREBY ORDERED AND DECREED THAT:

- (a) Defendants' imposition of all immigration-related conditions on FY 2018 Byrne JAG applicants is both unlawful and unconstitutional;
- (b) 8 U.S.C. § 1373 and 8 U.S.C. § 1644 are unconstitutional;
- (c) Defendants are enjoined from imposing all immigration-related conditions on Plaintiff States and all other FY 2018 Byrne JAG applicants located in Plaintiff States, including New York City, and this Court retains jurisdiction to monitor DOJ's compliance with this judgment;
- (d) Defendants are mandated to immediately disburse State Plaintiffs' FY 2018 Byrne JAG awards as they would in the ordinary course, without regard to the challenged conditions;
- (e) Defendants are mandated to disburse City Plaintiff's FY 2018 Byrne JAG award; and

- (f) Plaintiffs are awarded their reasonable fees, costs, and expenses, including attorneys' fees, pursuant to 28 U.S.C. § 2412.

Dated:

United States District Judge